PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	**Bruno RICHARD et al.**	) Examiner: Eric B. KISS
		)
Serial No.:	**09/883,724**	) Art Unit: 2192
		)
Filed:	June 18, 2001	) Our Ref: 50001723-2US
		) B-4215 618883-0
For:	"PROCESS FOR INSTALLING A SOFTWARE PACKAGE IN A CLIENT COMPUTER AND SERVER DOING THE SAME"	) Date: December 19, 2006
		) Re: *Appeal to the Board of Appeals*

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the rejection dated July 21, 2006, for the above identified patent application. Appellants submit that this Appeal Brief is being timely filed because the Notice of Appeal was filed on October 20, 2006. Please deduct the amount of $500.00 for the fee set forth in 37 C.F.R. 1.17(c) for submitting this Brief from deposit account no. 08-2025.

REAL PARTY IN INTEREST

The real party in interest to the present application is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to the present application.

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STATUS OF CLAIMS

Claims 1-9 are the subject of this Appeal and are reproduced in the accompanying

Appendix A. All nine claims stand rejected.

STATUS OF AMENDMENTS

No Amendment After Final Rejection has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in claim 1 is directed to a process for performing a remote setup

procedure of a software application on a remote client (3, 4) which operates under an operating

system which does not support a remote installation facility, comprising associating an

executable file from a shared resource (2) on a network (5) with the remote client at the direction

of an administrator console (1) on the network (p. 6 l. 23 – p.7 l. 6), the executable file being

adapted for controlling a local setup procedure under the form of a low level service which is

available in the operating system of the client for local background tasks and routines and further

being associated with a description contained within a description file present on the shared

resource (p. 7 l. 8 – p. 8 l. 2); and starting said executable file so that it becomes available to said

remote client as a local low level service and permits the automatic launching of a local setup

procedure in accordance with the contents of said description file (p. 8 l. 4 – p. 11 l.17, Fig. 1-3).

The invention claimed in claim 2 is directed to a process for performing a remote setup

procedure of a software application on a remote PC client (3, 4) which operates under an

Operating System on a Local Area Network (LAN) (5), comprising associating an executable file

from a shared resource (2) on the LAN with the remote PC client at the direction of an

administrator console (1) on the LAN (p. 6 l. 23 – p.7 l. 6), the executable file being adapted for

controlling a local setup procedure under the control of an Operating System Service Control

Manager (SCM) and in accordance with a description contained within a description file present

on the shared resource, said executable file receiving the format of an Operating System service

(p. 7 l. 8 – p. 8 l. 2); and starting said executable file so that it becomes available to said PC

client as an Operating System service and permits the launching of a local setup procedure

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within said PC client in accordance with the contents of said description file (p. 8 l. 4 – p. 11 l.17, Fig. 1-3).

The invention claimed in claim 8 is directed to a Process executed in a IT administrator console (1) on a network (5) for the purpose of controlling the remote installation of software application packages onto at least one PC client (3, 4), comprising associating an executable file from a shared resource on the network at the direction of the administrator console as an Operating System service under the control of an Operating System Service Control Manager (SCM) with said PC client (p. 6 l. 23 – p.7 l. 6), said executable file controlling the local setup procedure of a software application in unattended mode in accordance with a description defined by a description file present on said shared resource (p. 7 l. 8 – p. 8 l. 2); and starting said executable file as an Operating System service for the purpose of launching the setup procedure within said PC client (p. 8 l. 4 – p. 11 l.17, Fig. 1-3).

The invention claimed in claim 9 is directed to a process for controlling the execution on a remote PC client (3, 4) of an executable file existing on shared resources (2) in an Operating System domain (5), comprising associating said executable file from said shared resources at the direction of an administrator console (1) (p. 6 l. 23 – p.7 l. 6), said executable file installed as an Operating System service under the control of an Operating System Service Control Manager (SCM) with said PC client (p. 7 l. 8 – p. 8 l. 2); and starting said installed service for the purpose of automatically triggering the execution of said executable file (p. 8 l. 4 – p. 11 l.17, Fig. 1-3).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Issue 1:   Whether claims 1-4, 8 and 9 are patentable under 35 U.S.C. 102(e) over U.S. Patent No. 6,418,554 to Delo et al.

Issue 2:   Whether claim 5 is patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,418,554 to Delo et al. in view of U.S. Pat. No. 5,742,286 to Kung et al.

Issue 3:   Whether claim 6 is patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,418,554 to Delo et al. in view of U.S. Pat. No. 5,742,286 to Kung et al. and further in view of U.S. Pat. No. 5,881,236 to Dickey.

Issue 4:   Whether claim 7 is patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,418,554 to Delo et al. in view of admitted prior art.

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ARGUMENT

Issue 1:   Whether claims 1-4, 8 and 9 are patentable under 35 U.S.C. 102(e) over U.S. Patent No. 6,418,554 to Delo et al.

In section 4 of the final Office Action of July 21, 2006, the Examiner rejects claims 1-4, 8 and 9 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,418,554 to Delo et al. In particular, the Examiner finds that, with regard to claim 1, Delo discloses all of the claimed limitations at col. 6 ll. 31-55, col. 15 ll. 27-48, and col. 17 ll. 30-33. In their last submission, Appellants explained that they were compelled to disagree with the Examiner's understanding of this reference because, contrary to the Examiner's interpretation, there is nothing in the passage cited by the Examiner or anywhere else in Delo that could be understood as disclosing the associating of an executable file from a shared resource on a network wherein the executable file is adapted for controlling a local setup procedure under the form of a low level service.

Appellants noted that although Delo is concerned with a method of remotely installing software on computers on a network just like in their invention, Delo does so by using the Windows® Installer service to download and install the required files (see, e.g. col. 8 ll. 1-6 of Delo). As known, the Installer is a low level service that resides on each local computer and installs software when <u>activated locally</u> *by the <u>user</u>* of each such computer (see, e.g., col. 7 ll. 9-25) Appellants' claimed approach, on the other hand, employs a low level service that <u>resides on a remote server</u>, not on the computer, and which <u>executes locally</u> on the user's computer through the use of the Windows® Service Control Manager (SCM), which registers the remote low level service with the local PC as a <u>new</u> service and thereby allows the service to execute on the local PC as a local, low level service without actually being stored/residing on the local PC. The "executable file" of Delo, on the other hand, is the managed software installer mechanism (the Windows Installer) which is already resident on the local PC and thus cannot be categorized as being on a shared resource on a network. As Appellants noted, an easy way of divining the differences between Delo and their invention is that Delo uses the Windows Installer service already present on a local PC to install all software packages, whereas Appellants use a dedicated service downloaded from a server to install each particular software package. Thus, for the same reasons, Delo does not permit the <u>automatic</u> launching of a local setup procedure in accordance with the contents of a description file (as per Applicants' claims) because the user of Delo must

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first launch the Windows Installer by double clicking an icon or such, and nothing happens until the user chooses to so invoke the Installer service. This feature is important to note and a careful read of Delo reveals that it is replete with repeated assertions that the user must affirmatively start the Windows Installer service before any software can be installed.

In section 2 of the final Action, the Examiner alleges to reply to the above by simply "maintaining" that the Delo system permits the automatic launching of a local setup procedure in accordance with the contents of a description file (citing, once again, to col. 8 ll. 41-59), and further alleging that features relied by Appellants are not recited in the rejected claims. Appellants respectfully submit that the Examiner's answer is anything but, as it fails to address any of the specific, objective differences between the claims and Delo as identified in Appellants' previous submission.

With regards to the portion of Delo cited by the Examiner at col. 8 ll. 41-59, this paragraph describes one aspect of the process by which a user of a local client can install a so-called "advertised" application – that is, an application that is made available by a network administrator to clients on the network to install from a server on the network *at their discretion*. This is accomplished by the administrator generating a so-called advertising script (col. 7 l. 61) that is associated with a group policy template that is applicable to a number of users (col. 8 l. 41), and as each such user logs on to the network the advertising script presents the user with shortcuts on the user's local client machine for invoking the installation routines (col. 8 l. 48). Delo repeatedly informs the reader that (i) his invention relies on a "managed software installer mechanism" such as the Windows installer to place these shortcuts onto the user's client machine, and (ii) the user must affirmatively invoke the installation of such advertised applications by clicking on such shortcuts to launch the associated installation routines.

Appellants thus ask, how can Delo possibly be understood as teaching the starting of an executable file so that it becomes available to the remote client as a *local low level service* and permits the <u>automatic</u> launching of a local setup procedure in accordance with the contents of a description file?

Furthermore, the Examiner's rather vague rejection nonetheless makes it clear that the Examiner considers Delo's "managed software installer mechanism" to correspond to

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Appellants' executable file, in which case Appellants further ask: how can this be possibly understood to correspond to the presently claimed associating an executable file *from a shared resource on a network* with the remote client *at the direction of an administrator console on the network*? The "managed software installer mechanism" of Delo resides on the client, not on a shared resource on the network – thus, it is not only <u>permanently associated</u> with the respective client, but it is also nowhere within the control of the administrator of Delo's network. What the network administrator does associate is an advertising script (which, according to the Examiner, corresponds to Appellants' claimed "description file") <u>with a *group policy template*</u> that is clearly <u>not</u> an executable file (i.e. the "managed software installer mechanism").

With respect to the Examiner's allegation that features relied by Appellants are not recited in the rejected claims, namely "employing a low level service that resides on a remote server and using a dedicated service downloaded from a server to install each particular software package," this is simply not true. Appellants merely made reference to a remote server, a dedicated service, and such, to help the Examiner understand the present invention better. This gambit clearly has not paid off as the Examiner appears not to understand that a remote server corresponds to the claimed shared resource on a network, nor to discern the clearly cited "starting said executable file so that it becomes available to said remote client as a *local low level service*" in the claims. Nonetheless, Appellants submit that the Examiner's confusion notwithstanding, the skilled person would encounter no difficulty in understanding what features of the claims the above arguments refer to.

Thus, in view of all of the preceding, Appellants respectfully submit that claim 1 is in fact novel and nonobvious over the art on record, and request that the Examiner be reversed on appeal and claim 1 be passed to issue.

Appellants further submit that the above arguments are equally probative of the novelty of claims 2, 8 and 9, all of which address the same basic approach of associating an executable file with a client on a network from a shared network resource at the direction of a network administration console, wherein the executable file can be remotely launched for execution on the client. Appellants thus respectfully request that claims 2, 8 and 9 also be passed to issue.

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Claims 3-4 depend from claim 2. In view of the above discussion, it is submitted that claim 2 is allowable, and for this reason Appellants respectfully submit that claims 3-4 are also allowable at least based on their dependency, and are not further individually addressed elsewhere herein.

Issue 2: **Whether claim 5 is patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,418,554 to Delo et al. in view of U.S. Pat. No. 5,742,286 to Kung et al.**

Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,418,554 to Delo et al. in view of U.S. Pat. No. 5,742,286 to Kung et al.

Claim 5 depends from claim 2. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, in light of the above discussion of claim 2, Appellants submit that claim 5 is also allowable at least based on its dependency.

Issue 3: **Whether claim 6 is patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,418,554 to Delo et al. in view of U.S. Pat. No. 5,742,286 to Kung et al. and further in view of U.S. Pat. No. 5,881,236 to Dickey.**

Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,418,554 to Delo et al. in view of U.S. Pat. No. 5,742,286 to Kung et al. and further in view of U.S. Pat. No. 5,881,236 to Dickey.

Claim 6 depends from claim 2. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, in light of the above discussion of claim 2, Appellants submit that claim 6 is also allowable at least based on its dependency.

Issue 4: **Whether claim 7 is patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,418,554 to Delo et al. in view of admitted prior art.**

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Claim 7 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,418,554 to Delo et al. in view of admitted prior art.

Claim 7 depends from claim 2. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, in light of the above discussion of claim 2, Appellants submit that claim 7 is also allowable at least based on its dependency.

CONCLUSION

For the many reasons advanced above, Appellants respectfully contend that each claim is patentable and reversal of all rejections and allowance of the case is respectfully solicited.
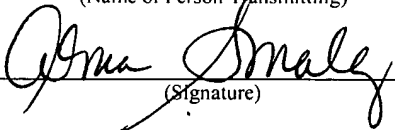
I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

December 19, 2006
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Alma Smalling
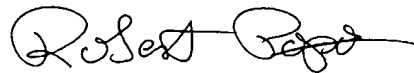(Name of Person Transmitting)

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(Date)

Attachments

Respectfully submitted,

Robert Popa
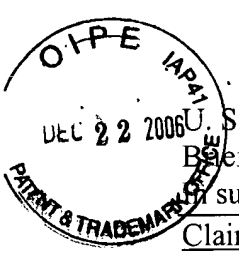Attorney for Appellants
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Claims

1.   Process for performing a remote setup procedure of a
software application on a remote client which operates under an
operating system which does not support a remote installation
facility, comprising:

      associating an executable file from a shared resource on a
network with the remote client at the direction of an
administrator console on the network, the executable file being
adapted for controlling a local setup procedure under the form
of a low level service which is available in the operating
system of the client for local background tasks and routines and
further being associated with a description contained within a
description file present on the shared resource; and

      starting said executable file so that it becomes available
to said remote client as a local low level service and permits
the automatic launching of a local setup procedure in accordance
with the contents of said description file.

2.   Process for performing a remote setup procedure of a
software application on a remote PC client which operates under
an Operating System on a Local Area Network (LAN), comprising:

      associating an executable file from a shared resource on
the LAN with the remote PC client at the direction of an
administrator console on the LAN, the executable file being
adapted for controlling a local setup procedure under the
control of an Operating System Service Control Manager (SCM) and
in accordance with a description contained within a description
file present on the shared resource, said executable file

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receiving the format of an Operating System service; and

starting said executable file so that it becomes available to said PC client as an Operating System service and permits the launching of a local setup procedure within said PC client in accordance with the contents of said description file.

3.   Process according to claim 2 wherein said executable file has an entry point which is a service entry and which is further registered by said Operating System Service Control Manager with a command line option which refers to said description file.

4.   Process according to claim 3 wherein said description file contains a list of the installation files required for a local setup procedure plus an additional line defining the command which is to be entered for executing an unattended setup procedure of said software application.

5.   Process according to claim 2 comprising the display of a Graphical User Interface (GUI) for providing to the user a list of software applications which are currently available on an Operating System domain as well as a list of computer clients therein included, and further including a drag-and-drop mechanism for the purpose of launching an additional remote setup procedure in a new PC client.

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6.   Process according to claim 2, further comprising:

prompting the user to enter a particular context where said executable file is to be executed;

requesting the id and password corresponding to that context;

verifying said id and password entered by the user and, in accordance with the verification, installing said executable file as an Operating System service.

7.   Process according to claim 2 wherein the installation of the Operating System service is followed by the activation of a Wake-on-LAN function in said PC client for the purpose of starting said service.

8.   Process executed in a IT administrator console on a network for the purpose of controlling the remote installation of software application packages onto at least one PC client, comprising:

associating an executable file from a shared resource on the network at the direction of the administrator console as an Operating System service under the control of an Operating System Service Control Manager (SCM) with said PC client, said executable file controlling the local setup procedure of a software application in unattended mode in accordance with a description defined by a description file present on said shared resource; and

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starting said executable file as an Operating System service for the purpose of launching the setup procedure within said PC client.

9.   (currently amended) Process for controlling the execution on a remote PC client of an executable file existing on shared resources in an Operating System domain, comprising:

associating said executable file from said shared resources at the direction of an administrator console, said executable file installed as an Operating System service under the control of an Operating System Service Control Manager (SCM) with said PC client; and
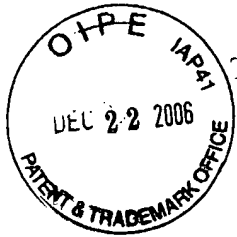
starting said installed service for the purpose of automatically triggering the execution of said executable file.

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There is no evidence submitted with the present Brief on Appeal.

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There are no other appeals or interferences related to the present application.